

**SIGNIFICANT ADVICE LETTERS  
PUBLIC GENERALLY  
APPOINTED MEMBERS OF BOARDS AND COMMISSIONS**

➤ **TOWNER ADVICE LETTER, NO. A-87-038**

In 1987, staff advised a member of the Sexual Assault Advisory Committee that the exception applied. The committee was established pursuant to Penal Code Sections 13836 and 13836.1. It was charged with developing a course of training for district attorneys in the investigation and prosecution of sexual assault cases, child sexual exploitation cases, and child sexual abuse cases and was also authorized to approve the award of grants. After describing the regulatory exception, we advised:

“As can be seen from the foregoing, if the committee had been established by the Legislature to regulate a particular ‘industry, trade or profession,’ the Legislature could have made an express finding to permit employees or members of that industry, trade or profession to participate in decisions affecting that industry, trade or profession. In the alternative, such findings could be determined to be **implicit** in the legislation which established such a regulatory body. (Regulation 18703(d); see, *Consumers Union v. Calif. Milk Producers Advisory Bd.* (1978) 82 Cal. App. 3d 433.) Under either of those circumstances, an employee or a member of the industry, trade or profession could participate in decisions affecting his or her employer or business entity, as long as those decisions affected all other members of the industry, trade or profession in substantially the same manner.” [Citation omitted.] [Emphasis added.] (*Towner* Advice Letter, *supra*, No. A-87-038.)

Reflecting the broad approach, we advised that, “by analogy,” the exception would have potential application to a committee member, even though rape crisis centers did not constitute an “industry, trade or profession” under the regulation. (*Towner* Advice Letter, *supra*, No. A-87-038.) In a footnote, we opined: “In applying Regulation 18703(d) by analogy, we are mindful that the economic interests involved in this situation are not for-profit entities, but are, instead, nonprofit, charitable organizations. **Under these circumstances, a liberal application of the requirements of subdivision (d) seems appropriate.**” [Emphasis added.]

➤ **BEAUTROW ADVICE LETTER, NO. I-89-042**

In 1989, Commission staff applied the exception narrowly, advising an appointee to the California Waste Management Board as follows:

“The exceptions in Regulation 18703(c) and (d) do not apply to your situation because you were not appointed to the board as a representative of the solid waste industry pursuant to state law. **While there are industry representatives**

**appointed to your board, you were appointed as a public member with specified expertise.” [Emphasis added.]**

➤ **FELLOWS ADVICE LETTER, NO. I-91-395**

In 1991, staff again applied the exception narrowly, declining to apply the exception to business representative members of the Irvine Transportation Authority, stating:

“Under your facts the transit authority was created to serve the entire public, and not solely to regulate the industries in question. If an appointed member of the authority votes consistent with the interests of the association the member represents, there is no assurance that the vote will serve the interests of the public. **Moreover, the appointing associations do not appear to be industries, trades, or professions as the regulation contemplates.** With the exception of the Building Industry Association of Southern California, all the nominating associations appear to be broad coalitions of varied business entities. Compare, for example, the *Callanan* Opinion, which concerned the State Board of Funeral Directors and Embalmers, and the *Strickland* Advice Letter, which concerned a local waste board.”

“Thus, while it appears that the six members appointed by the various private associations are intended to be representatives of the appointing associations, we do not believe that Regulation 18703(d) applies to the authority.” [Emphasis added.]

➤ **COSGROVE ADVICE LETTER, NO. I-93-238**

Consistent with the narrow construction applied in the *Fellows* Advice Letter, in *Cosgrove* we advised that despite the fact that the exception applied to the Palm Springs' Visitors and Promotion Board, the exception could be applied only to industry members, and not nonindustry members, such as the city council representatives and the public members who are appointed to represent the jurisdiction as a whole.

➤ **FRANK ADVICE LETTER, NO. A-93-410**

In the *Frank*, we applied the exception to members of the Delta Protection Commission (DPC). Members were appointed from reclamation district boards within the Sacramento-San Joaquin Delta. While there was no express economic interest associated with appointment to the DPC itself, members of reclamation district boards were statutorily required to be real property owners in their respective reclamation districts. We went beyond a literal reading of the exception, stating:

“On the basis of these statutory provisions, we conclude that there is an **implicit** finding in these statutes that reclamation district members who are required to own or represent real property in their reclamation districts are appointed to the DPC to represent real property interests that would be affected by DPC decisions. ... DPC reclamation district board members who are required to own or represent real property in their reclamation districts serve on the DPC because they own or represent real property that may be affected by DPC decisions.” [Emphasis added.] (See also *Day* Advice Letter, No. I-94-228.)

➤ **DAVIS ADVICE LETTER, NO. A-93-476**

In 1994, the exception was applied to a member of the Board of Chiropractic Examiners who also was a licensed chiropractor and the salaried chair of the Governmental Affairs Department of the California Chiropractic Association and received compensation in that position. He was one of five members, all of whom were required to be licensed chiropractors in the State of California. We advised that the exception potentially applied to the member. This was really an example of the classic application of the exception to a member of a board regulating an “industry, trade or profession.”

➤ **LAROCQUE ADVICE LETTER, NO. I-94-027**

However, reflecting the broad approach, in the *Larocque* Advice Letter, the exception was again applied to a nonindustry setting. In that letter, we advised the exception did apply to boards created under the Ryan White Comprehensive AIDS Resources Emergency Act of 1990. As part of the federal scheme, regional HIV Care Consortia were created within areas most affected by HIV. Voting members of the consortium included salaried and nonsalaried officers in nonprofit and for-profit care, service providers, paid staff members of care providers, government officials, and community representatives who might be clients (receiving services) from any of the service providers. We advised exceptions applied to the members so long as their economic interests were not uniquely affected.

➤ **GALLIANO ADVICE LETTER, NO. A-94-024**

That same year the exception was broadly applied to another nonindustry member in *Galliano*. That letter concerned a commissioner appointed to the Union City Mobile Home Space Rent Review Board pursuant to the Union City Municipal Code to represent mobile home park tenants. Since the code provided that persons appointed to the board were appointed to represent and further the interests of tenants and mobile home park owners, we concluded the regulation applied to a commissioner representing tenants just the same as it would apply to an industry representative.

➤ ***SPRIGGS ADVICE LETTER, NO. I-96-031 AND EISER ADVICE LETTER, NO. I-95-075***

In 1996, we advised that members of Redevelopment Project Area Committees fell within the scope of the exception. State law required that members of a project area committee must have a business interest or a residence within the boundaries of the area. Thus, a member appointed to represent a business interest could use the exception. While this was consistent with the regulation in that the member was statutorily required to have an economic interest, the representation of business in general obviously lacked the type of specificity of the economic interests associated with boards and commissions for an industry, trade or profession that had spawned the exception in the first place.

➤ ***BENNETT ADVICE LETTER, NO. A-98-239***

Application of the exception to members of appointed boards and commissions with more general economic interests is again reflected in the *Bennett* Advice Letter. Welfare and Institutions Code Section 10847.51 authorized the board of supervisors to adopt an ordinance establishing a commission to negotiate exclusive contracts with the California Medical Assistance Commission, to provide health care services for indigent county residents, in order to meet the problems of publicly assisted medical care, and to demonstrate ways of promoting quality care and cost efficiency. The San Mateo Health Commission consisted of eleven voting members, composed as follows: two members of the San Mateo County Board of Supervisors, the county manager or his designee, a physician, a hospital administrator, three public members (a beneficiary or representative of beneficiaries served by the health commission, a representative of the senior and/or minority communities in San Mateo County, and a nurse), a representative of San Mateo County General Hospital physicians, a pharmacist, and a representative of hospitals located in San Mateo County. The public member received income from a nonprofit organization which might be impacted by the commission's decisions.

“Pursuant to San Mateo County Ordinance Code section 2.68.020, the county appointed Commissioner Lopez to represent the interests of the “**minority community**” in the county. Therefore, the first requirement in subdivision (1) is met.

“The commissioner has an economic interest in El Concilio, a nonprofit organization established to improve the quality of public health for county residents who have traditionally been disadvantaged in terms of access to health care services. The question presented by the second requirement is whether the phrase ‘minority community’ includes nonprofit organizations that promote the interests of the minority community. [Footnote omitted.] In the *Rankin* Advice Letter, No. A-94-310, we interpreted the term ‘organized labor’ to include nonprofit organizations that represent the interests of workers. In contrast, in the *Galliano* Advice Letter, No. I-94-088, we concluded that the

term ‘mobile home park owner’ did not refer to an association that was created to further the interests of mobile home park owners. In this case, we find that the phrase ‘minority community’ is sufficiently broad to include El Concilio. Therefore, the second requirement in subdivision (2) is also met.

“The third requirement in subdivision (3) will be met if the commissioner does not have any other economic interest that will be affected by the decision. Pursuant to the last requirement in subdivision (4), the decision must affect El Concilio in substantially the same manner as a significant segment of the minority community. A decision regarding a contract with a competing entity will affect El Concilio in substantially the same manner as other entities that are seeking enhancement funding to promote the health care needs of the minority community. Since these other non-contracting entities will constitute a significant segment of persons the commissioner was appointed to represent, the public generally exception will permit the commissioner to participate in decisions relating to contracts with entities other than El Concilio. On the other hand, the exception will not apply to any decision relating to a contract between El Concilio and the health commission because such decisions would have a unique effect upon El Concilio.” [Citations omitted.] [Emphasis added.] (*Bennett* Advice Letter, *supra*, A-98-239.)

Representation of the “minority community” as being an economic interest for purposes of the exception illustrates more than just a broad interpretation of the “economic interest” element of the exception. It illustrates that the exception was now coming into play with a broad array of issue-oriented legislation that was not envisioned at the inception of the exception. This was not so much an evolution of the exception, as it was a response to the increasing legislative use of specialized boards and commissions to address complex issues.

➤ ***HOLLAND* ADVICE LETTER, NO. I-01-140 AND *DORSEY* ADVICE LETTER, NO. I-01-102**

The two most recent letters, *Holland* and *Dorsey*, were both issued this year. *Holland* applied the exception to work force investment boards created under federal law. (See also, *Larsen* Advice Letter, No. I-94-110.)

In *Dorsey* we advised that the exception could apply to members of the L.A. Care Health Plan, a local agency established pursuant to Welfare Institutions Code Section 14087.96 for the purpose of improving health care services for Medi-Cal recipients and other under-served communities by offering them managed health care services. Welfare and Institutions Code Section 14087.961 provides that a thirteen member board of governors appointed by the Los Angeles County Board of Supervisors governs L.A.

Care. Seven of the board members ("stakeholder Board Members") are nominated by various organizations such as the Hospital Council of Southern California and the Los Angeles County Medical Association as "representatives of" the interests of members of those organizations. None of these board members are required by statute to have the economic interest the member represents. However, most of them do have such interests because it has been extremely difficult to find knowledgeable persons who do not have such interests. Four members have traditionally consisted of one member of the board of supervisors and three other county officers and employees working in or with the County Department of Health Services. One of the remaining two members of the board of governors is required to be a health care consumer and the other is required to be a health care consumer advocate.

In *Dorsey* we advised: "With respect to subdivision (a)(2), we conclude that where the members have an economic interest in a person or entity in the group they represent, by virtue of his or her membership or **connection** to that group, this section is satisfied." [Citation omitted.] [Emphasis added.]

*Holland* and *Dorsey* exemplify the current status of the legislative use of specialized boards and commissions. There are more and more pieces of legislation that use specialized appointed boards and commissions to address a variety of complex issues of public concern. Membership on these boards and commissions is sometimes based upon general or specific economic interests, but it can also be based on expertise in a given field of knowledge or even membership in a given economic strata or social group. The analysis is no longer limited to the parochially focused boards and commissions that gave rise to the exception.